

Commodity Futures Trading Commission

§ 4.5

the document. Inclusion of such material in a Disclosure Document shall be subject to the requirements of § 4.24(v) in the case of pool Disclosure Documents, and § 4.34(n) in the case of commodity trading advisor Disclosure Documents.

(Approved by the Office of Management and Budget under control number 3038-0005)

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 62 FR 39115, July 22, 1997]

§ 4.2 Requirements as to filing.

(a) All material filed with the Commission under this part 4 must be filed with the Commission at its Washington, DC office (Att: Managed Funds Branch, Division of Trading and Markets, CFTC, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581); Provided, however, that Disclosure Documents, profile documents, and amendments thereto may be filed at the following electronic mail address: ddoc-efile@cftc.gov.

(b) All such material shall be considered filed when received by the Commission at the address specified in paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 3038-0005)

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 60 FR 49334, Sept. 25, 1995; 62 FR 18268, Apr. 15, 1997; 65 FR 58649, Oct. 2, 2000]

§§ 4.3-4.4 [Reserved]

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term “commodity pool operator.”

(a) Subject to compliance with the provisions of this section, the following persons, and any principal or employee thereof, shall be excluded from the definition of the term “commodity pool operator” with respect to the operation of a qualifying entity specified in paragraph (b) of this section:

(1) An investment company registered as such under the Investment Company Act of 1940;

(2) An insurance company subject to regulation by any State;

(3) A bank, trust company or any other such financial depository institu-

tion subject to regulation by any State or the United States; and

(4) A trustee of, a named fiduciary of (or a person designated or acting as a fiduciary pursuant to a written delegation from or other written agreement with the named fiduciary) or an employer maintaining a pension plan that is subject to title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That for purposes of this § 4.5 the following employee benefit plans shall not be construed to be pools:

(i) A noncontributory plan, whether defined benefit or defined contribution, covered under title I of the Employee Retirement Income Security Act of 1974;

(ii) A contributory defined benefit plan covered under title IV of the Employee Retirement Income Security Act of 1974; *Provided, however,* That with respect to any such plan to which an employee may voluntarily contribute, no portion of an employee's contribution is committed as margin or premiums for futures or options contracts;

(iii) A plan defined as a governmental plan in section 3(32) of title I of the Employee Retirement Income Security Act of 1974;

(iv) Any employee welfare benefit plan that is subject to the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974; and

(v) A plan defined as a church plan in Section 3(33) of title I of the Employee Retirement Income Security Act of 1974 with respect to which no election has been made under 26 U.S.C. 410(d).

(b) For the purposes of this section, the term “qualifying entity” means:

(1) With respect to any person specified in paragraph (a)(1) of this section, an investment company registered as such under the Investment Company Act of 1940;

(2) With respect to any person specified in paragraph (a)(2) of this section, a separate account established and maintained or offered by an insurance company pursuant to the laws of any State or territory of the United States, under which income gains and losses,